

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- against -

05 Cr. 495 (JGK)

JUAN CARLOS HERRERA GOMEZ,

MEMORANDUM OPINION AND
ORDER

Defendant.

JOHN G. KOELTL, District Judge:

The Court has received the attached motion for summary judgment from the defendant.

On December 12, 2011, the Court ordered the Government to respond to the defendant's motion for reconsideration of the Court's November 14, 2012 Memorandum Opinion and Order. The Court specifically ordered the Government to respond by January 3, 2012, and to "respond to the defendant's contention that the administrative forfeiture was procedurally defective." The defendant asserts that the Government has not responded to the motion for reconsideration.

The defendant has moved for summary judgment "in light of the facts that the Government has refused to move or answer." The Court will construe the defendant's motion for summary judgment as a motion for a default judgment pursuant to Rule 55 of the Federal Rules of Civil Procedure. Rule 55 allows for the entry of a default judgment when a party "has failed to plead or otherwise defend." Fed. R. Civ. P. 55(a). "In general, neither the entry of default nor default judgment are appropriate based on a party's failure to

file a response to a motion." Johnson v. Pugh, No. 11 Civ. 865, 2012 WL 523793, at *3 (E.D. Wis. Feb. 15, 2012).

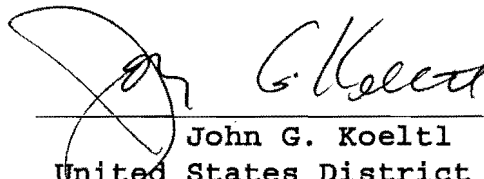
In this case, the Government responded to the defendant's initial complaint for equitable relief pursuant to Rule 41(g) of the Federal Rules of Civil Procedure for the return of his property. However, the Government has not responded to the pending motion for reconsideration of the Court's prior Order on the complaint pursuant to Rule 41(g). The Government's failure to respond to the motion is not a proper basis for a default judgment. The defendant's motion for a default judgement is denied without prejudice.

The Government should respond to the motion for reconsideration by April 19, 2012. The Government should also explain why it failed to respond to the Court's December 12, 2011 Order. If the Government does not respond or otherwise move to extend its time to respond, the Court may treat the defendant's factual assertions with respect to the alleged procedural defects in the administrative seizures at issue as uncontested.

The Clerk is directed to close Docket No. 215.

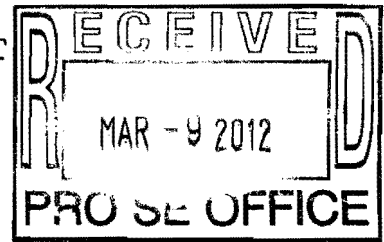
SO ORDERED.

Dated: New York, New York
March 29, 2012



John G. Koeltl
United States District Judge

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,
Plaintiff,

002-4 215

V.

05-CR-495-06 (JGK)

JUAN CARLOS HERRERA GOMEZ,
Defendant



NOTICE TO THE COURT AND MOTION FOR SUMMARY JUDGEMENT

TO THE HONORABLE COURT:

COMES NOW, the Defendant JUAN CARLOS HERRERA GOMEZ, herein acting Pro-Se, pursuant to the above styled cause and action to respectfully move this Honorable Court to grant this, the Defendant's Motion for "Summary Judgement" in accordance with Rule 56 of the Fed. R. Civ. P. governing Summary Judgements.

As it was brought to this District Court's attention in a Motion for Return of Property pursuant to Rule 41(g), initiated by the Defendant and filed on or about July 2011, The District Court, ordered the government to respond defendant's motion on September 27, 2011 regarding the defendant's request for return of property in the above captioned matter.

On December 1, 2011, the defendant submits a motion reply to the September 27, 2011 government motion in which the government is denying the property seized. The District Court received the Plea for Liberal Consideration Motion and consider it a motion for reconsideration of this Court's Memorandum and Opinion and Or-

der dated November 14, 2001.

On December 12, 2011, this District Court, Ordered that the Government may reply by tuesday, January 3, 2012. The Defendant may reply by tuesday, January 24, 2012.

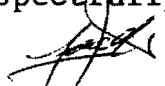
The defendant is filing this "Notice to the Court" to inform the Court that the Twenty two (22) days allocated by the Court had expired on January 3, 2012. Petitioner has not received any motion for extension of time from the Government, nor any Order from this Honorable District Court, Granting any extension of time to Move or Answer.

Therefore, in accordance with Rule 56 of the Fed. R. Civ. P. the Defendant is petitioning this Honorable District court for a Summary Judgement in light of the facts that the Government has refused to Move or Answer as of this date, February 1, 2012.

Wherefore, The Defendant submits this for entry with this Honorable District Court, his "NOTICE TO THE COURT AND MOTION FOR SUMMARY JUDGEMENT" and respectfully request a Final Order GRANTING him relief as pleaded for his Motion for Return of Property initiated by the defendant on or about July 2011.

Submitted, ~~February~~ ^{March} 1, 2012

Respectfully



JUAN Carlos Herrera Gomez
Reg # 58020-037
N.E.O.C.C.
2240 Hubbard Road
Youngstown, OH. 44505

CERTIFICATE OF SERVICE

I, hereby certify that on this date I have mailed a copy of the foregoing motion "Notice to the Court and Motion for Summary Judgement" to the clerk of the court at United States District Court, at Southern District of New York, United States Courthouse, 500 Pearl Street, New York, NY. 10007-1312, and to the United States Attorney's Office for the Southern District of New York at The Silvio J, Mollo Building, One Saint Andrew's Plaza, New York, NY 10007, via USPS.

Submitted ~~March~~ ^{March} 1, 2012

Respectfully



Juan Carlos Herrera Gomez
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